

DECISION

supine 24453
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-210410; B-210449; **DATE:** April 25, 1983
B-210450; B-210451
MATTER OF: Aero Tube and Connector Company

DIGEST:

Protests concerning alleged failure to require inspection and acceptance at the source for critical application aircraft parts concern improprieties in a solicitation that are apparent and therefore must be filed prior to the closing dates for receipt of initial quotations.

Aero Tube and Connector Company protests a series of Defense Construction Supply Center (DCSC) procurements. These include: (1) a procurement under Request for Quotation (RFQ) DLA 700-82-T-Z056 for coupling tubes (B-210410); (2) a procurement resulting in the award of purchase order DLA 700-82-M-L498 for a part identified as NSN 4730-315-6703 (B-210449); (3) procurements under RFQs DLA 700-82-T-KD49 and DLA 700-82-T-HA30 for tube nut assemblies (B-210450); and (4) a procurement under RFQ DLA 700-83-Q-ZC02 for tube caps (B-210451). In each instance, Aero asserts that DCSC has erroneously failed to require inspection and acceptance at the source which Aero contends is mandated by Defense Acquisition Regulation § 14-305.2(b) (ii) because all of the parts are considered to be critical application aircraft parts.

We dismiss the protests.

In B-210410 the record shows that Aero filed a protest with DCSC on September 29, 1982 after learning that award had been made under purchase order DLA 700-82-M-LP73. DCSC ultimately agreed to the protest and attempted, unsuccessfully, to terminate the award. Aero protests to our Office because it is not satisfied that DCSC acted diligently in attempting to implement corrective action.

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It appears that Aero's original protest to DLA was untimely. Since Aero submitted a quotation in response to the RFQ, it is clear that Aero was on notice of its contents, which did not identify the parts as critical or call for inspection and acceptance at the source. Section 21.2 (b)(1) of our Bid Protest Procedures (4 C.F.R. § 21.2(b)(1)) provides that a protest concerning a solicitation defect which is apparent prior to a bid opening or closing date must be filed prior to that date. Under § 21.1(a) of our procedures, a protest initially filed with a contracting activity will be considered by our Office only if it was originally filed in accordance with this time limit. Because Aero waited until after award to file its initial agency-level protest, its subsequent protest to our Office is untimely.

The protest in B-210451 is defective for the same reason. Again, the protester participated in the procurement, and therefore, was on notice of any apparent solicitation defect. It waited, however, to protest to DCSC until December 14, 1982, more than a month after award had been made.

Similar considerations apply to the protests concerning RFQ DLA 700-82-T-HA30 and KD49 (B-210450). According to Aero, it advised the agency of the need to have inspection at the source both with its quotations and in telephone conversations and letters. For example, Aero states that it advised the agency of the discrepancy concerning KD49 in a telephone conversation on October 19, 1982. However, the closing date for KD49 occurred 5 weeks earlier, on September 16, 1982.

Regarding HA30, Aero asserts it advised the agency of its concerns by letter dated August 13, 1982, and by telephone on November 22 and December 2. This RFQ closed on November 4.

This protest also concerns a defect in the solicitation which was apparent prior to the closing date and thus the protest had to have been filed prior to the closing dates. However, Aero filed its protest with the agency on these procurements by letter dated December 23, 1982; on January 4, 1983, Aero filed a protest with GAO.

Moreover, we point out that even if the August 13 letter to the agency concerning HA30 was a protest, the agency's failure to take corrective action by the closing

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date would be treated as a denial of the protest (requiring a protest to our Office within 10 working days). Precision Dynamics Corporation, B-207823, July 9, 1982, 82-2 CPD 35. We also point out that a protest filed with a quotation is not timely. Government Information Systems, Division of Planning Research Corporation, 61 Comp. Gen. 614 (1982), 82-2 CPD 261.

The protest in B-210449 was filed with our Office on January 4, 1983. Aero originally filed its protest with DCSC on or about May 7, 1982. On May 24, 1982, DCSC wrote Aero agreeing to the protest and stating that remedial steps would be taken. The protest to our Office is untimely in view of Aero's apparent failure to pursue its concerns in a diligent fashion. We have stated that protesters must diligently pursue information that forms the basis of a protest, and if they do not do so within a reasonable time, our Office will dismiss an ultimately-filed protest as untimely. Mitek Systems, Inc., B-208786, September 24, 1982, 82-2 CPD 274. Aero simply could not wait more than 7 months to express dissatisfaction with the agency's attempted remedial action.

Finally, we point out that none of the four protests raises an issue which we would be inclined to review since the protester is seeking to have included in solicitations language which would tend to restrict competition to approved sources. Inclusion of such clauses may be a matter of practical concern to the procuring activity, but generally their omission is not a matter of legal concern. See Edcliff Instruments, B-205371, April 26, 1982, 82-1 CPD 380.

The protests are dismissed.

Harry R. Van Cleve
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Acting General Counsel